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WASHINGTON
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RECORDATION NO. 9445-B

DEC 2 - 1994 - 2:30 PM

INTERSTATE COMMERCE COMMISSION

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BRANCH

THOMAS J. WOODFORD
DIAL DIRECT (202) 467-7159

December 2, 1994

BY HAND DELIVERY

Vernon A. Williams, Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Mr. Williams:

I have enclosed one original and one counterpart of the secondary document described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

The enclosed document is an Amendment and Extension to Lease of Railroad Equipment, a secondary document, dated as of July 8, 1994 (the "Amendment"), between United States Trust Company of New York, as Trustee, as Lessor (the "Lessor") and Burlington Northern Railroad Company (as successor to Burlington Northern Inc.), as Lessee (the "Lessee"). The primary document to which the Amendment is connected is the Lease of Railroad Equipment dated as of May 1, 1978, between the Lessor and Burlington Northern Inc. (the "Lease") recorded with the Interstate Commerce Commission on June 19, 1978 at 12:10 p.m. and assigned Recordation No. 9445-B.

The names and addresses of the parties to the document are as follows:

Lessor: United States Trust Company of New York, not in its individual capacity but solely as Trustee
114 West 47th Street
New York, New York 10036

Lessee: Burlington Northern Railroad Company
3200 Continental Plaza
777 Main Street
Fort Worth, Texas 76102

A description of the equipment covered by the documents follows:

Forty-nine (49) General Motors Corporation (Electro-Motive Division) Model SD40-2 diesel electric locomotives bearing identification numbers BN 7063 through BN 7074 and BN 7832

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Mr. Vernon A. Williams, Secretary
December 2, 1994
Page 2

through BN 7868, both inclusive, and twenty-two (22) General Electric Company Model C30-7 diesel electric locomotives) bearing identification numbers BN 5545 through BN 5566, both inclusive.

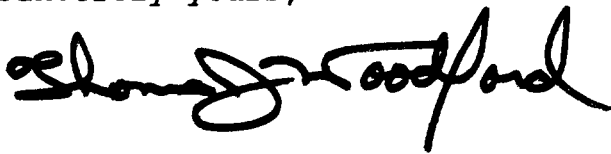
A check in the amount of \$21.00 is enclosed to cover the fee for filing the Amendment. Please return the counterpart of the Amendment and the extra copy of this letter, time and date-stamped as to filing and return any extra copies of the Amendment or this letter not needed by the Commission for recordation to Thomas J. Woodford, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036.

A short summary of the document follows:

1. An Amendment and Extension to Lease of Railroad Equipment dated as of July 8, 1994 between United States Trust Company of New York (not individually but solely as Trustee under a Trust Agreement dated January 27, 1978, as amended and restated by Amendment No. 1 to Trust Agreement dated as of May 1, 1978), as Lessor, 114 West 47th Street, New York, New York 10036 and Burlington Northern Railroad Company (as successor to Burlington Northern Inc.), 3200 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102, as Lessee, amending and extending the Lease of Railroad Equipment dated as of December 1, 1977 between Lessor and Burlington Northern Inc. covering 49 General Motors Corporation (Electro-Motive Division) Model SD40-2 diesel electric locomotives and 22 General Electric Company Model C30-7 diesel electric locomotives.

If you have any questions, please do not hesitate to call the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas J. Woodford", written in a cursive style.

Thomas J. Woodford

Enclosures
TWJ:11

RECORDATION NO. 9445-1

FILED 1995

DEC 2 - 1994 - 2 30 PM

INTERSTATE COMMERCE COMMISSION

AMENDMENT AND EXTENSION TO LEASE OF RAILROAD EQUIPMENT

Dated as of July 8, 1994

Between

BURLINGTON NORTHERN RAILROAD COMPANY (as successor to
Burlington Northern Inc.),

as Lessee,

and

UNITED STATES TRUST COMPANY OF NEW YORK, not in its individual
capacity but solely as Trustee under a Trust Agreement dated as of May 1, 1978
with J.P. Morgan Interfunding Corp. and The Connell Company (Connell Leasing
Company Division) (formerly known as Connell Rice & Sugar Co., Inc.(Connell
Leasing Company Division))

as Owner-Trustee

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AMENDMENT AND EXTENSION TO LEASE OF RAILROAD EQUIPMENT

THIS AMENDMENT AND EXTENSION TO LEASE OF RAILROAD EQUIPMENT dated as of July 8, 1994 (this "*Amendment*") is between BURLINGTON NORTHERN RAILROAD COMPANY (as successor to Burlington Northern Inc.), a Delaware corporation (the "*Lessee*") and UNITED STATES TRUST COMPANY OF NEW YORK, a New York trust company, not in its individual capacity but solely as Trustee (the "Owner Trustee") under a Trust Agreement dated January 27, 1978, as amended and restated by Amendment No. 1 to Trust Agreement dated as of May 1, 1978 (the "Trust Agreement") with J.P. Morgan Interfunding Corp. ("Morgan") and The Connell Company (Connell Leasing Company Division) (formerly known as Connell Rice & Sugar Co., Inc. (Connell Leasing Company Division)) ("Connell"; Connell and Morgan being hereinafter referred to severally as an "Owner" and collectively as the "Owners").

RECITALS:

A. The capitalized terms used in this Amendment shall have the respective meanings specified in the Lease (as hereinafter defined) unless otherwise herein defined or the context hereof shall otherwise require.

B. The Lessee and the Owner Trustee entered into that certain Lease of Railroad Equipment dated as of May 1, 1978 (the "*Lease*") covering seventy one Units (consisting of 49 General Motors Corporation (Electro-Motive Division) Model SD40-2 diesel electric locomotives (the "GM Units"); and 22 General Electric Company Model C30-7 diesel electric locomotives (the "GE Units")).

C. The Lease was filed and recorded with the Interstate Commerce Commission on June 19, 1978 at 12:10 p.m. and assigned Recordation No. 9445-B.

D. The Lease was amended by Amendment No. 1 dated as of July 1, 1979 to Lease of Railroad Equipment (the "First Amendment").

E. The parties hereto desire to extend and amend the Lease in the respects, but only in the respects, hereinafter set forth.

In consideration of the foregoing and the premises hereof, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. LEASE EXTENSION.

Section 1.1. Term. The parties hereto hereby agree that the term of the Lease as to all of the Units subject to the Lease as of the date hereof shall terminate on January 3, 1995 and that such term be extended for a period of seven years (the "*First Extended Term*") commencing on January 4, 1995 and terminating on January 3, 2002.

Section 1.2. Rentals. With respect to each Unit subject to the Lease during the First Extended Term, the Lessee will pay to the Owner-Trustee, as rental for each such Unit, in arrears, 14 consecutive semiannual installments payable on January 3 and July 3 in each year, commencing July 3, 1995. The 14 consecutive semiannual rental installments shall each be in an amount equal in the aggregate to

- (a) the product of (i) \$ * and (ii) the number of GM Units subject to the Lease on the first day of such semiannual period for which such rental installment is due; and
- (b) the product of (i) \$ * and (ii) the number of GE Units subject to the Lease on the first day of such semiannual period for which such rental installments is due.

SECTION 2. AMENDMENTS TO LEASE

The Lease is hereby amended as follows:

(a) Section 6.1 of the Lease is hereby amended by adding the words "(including, without limitation, the use or operation of any Unit in Canada or Mexico)" after the words "purchase, ownership, delivery, leasing, possession, use, operation" appearing at the beginning of the eighth line thereof.

(b) For and only for the period of the First Extended Term, the second sentence of the first paragraph of Section 7.1 of the Lease is deleted, and the following two sentences are inserted in lieu thereof:

"The date that a Casualty Occurrence has occurred shall hereinafter be called a "Casualty Date". On a date (a "Casualty Payment Date") no more than thirty days after the Casualty Date, the Lessee shall pay to the Owner-Trustee a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus any rental (on a daily pro-rata basis if the Casualty Date is not a rental payment date) accrued up to and including the Casualty Date, in respect of such Unit.

(c) For and only for the period of the First Extended Term, Section 7.5 of the Lease is hereby amended to read in its entirety as follows:

* Redacted for purpose of I.C.C. filing

"7.5 *Amount of Casualty Values.* The Casualty Value of each Unit (including each GM Unit and each GE Unit) as of the Casualty Payment Date on which payment is made shall be determined as follows:

(a) if the Casualty Date coincides with a "Date" set forth on Schedule A to this Amendment ("Schedule A"), the Casualty Value shall be an amount equal to that amount as is set forth on Schedule A for such Date, or

(b) if the Casualty Date coincides with a date other than a Date set forth on Schedule A, the Casualty Value shall be an amount equal to that amount as is set forth on Schedule A opposite the Date next preceding the Casualty Date."

(d) Section 7.6 of the Lease is hereby deleted.

(e) Section 11.2 of the Lease is hereby amended by adding a new subsection (3) as follows:

"(3) The provisions of this Section 11 shall be complied with in all respects as to all Units covered by Lease, including any Units caused to be operated or present in Mexico; *provided, however,* that to the extent that Lessee is prevented by governmental authorities in Mexico from complying in one or more respects with the provisions hereof, or is required to modify the Units in ways not contemplated by the provisions of this Section, then, at Lessee's expense, (i) Lessee shall comply with Mexican governmental requirements; and (ii) Lessee shall cause the Units to be fully in compliance with the terms of this Lease upon the return of the Units to the continental United States."

(f) Section 12.1 of the Lease is hereby amended by adding the words "(including, without limitation, the use or operation of any Unit in Canada or Mexico)" after the words "purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation" appearing in the tenth line thereof.

(g) Section 14.1(a) of the Lease is hereby amended by inserting the words "in the continental United States" after the words "Units) and at the usual speed place such Units" appearing at the beginning of the fourth line thereof.

(h) Section 15.2(2) of the Lease is hereby amended by adding the words "Canada or Mexico," after the words "to the date hereof," appearing at the beginning of the thirteenth line thereof.

(i) Section 16 of the Lease is hereby amended by deleting said Section 16 in its entirety and substituting the following language in lieu thereof:

**"SECTION 16. RENEWAL
FOR UP TO THREE SUCCESSIVE TWO-YEAR PERIODS.**

Provided that this Lease has not been earlier terminated and no Event of Default hereunder has occurred and is continuing, the Lessee may, by written notice delivered to the Owner-Trustee not less than 180 days prior to the end of the First Extended Term, the second extended term, or the third extended term of this Lease, elect to extend such extended term of this lease, in respect of all but not less than all the Units then covered by this Lease, for an additional two-year period commencing on the scheduled expiration date of the respective extended term of this lease, at the following rental amounts: With respect to each Unit subject to the Lease during each such elected extension, the Lessee shall pay to the Owner Trustee as rental for each such Unit, in arrears, four consecutive semiannual installments on the month and day such rentals were payable for the Units in each year of the First Extended Term, each such rental installment to be in an amount equal to

- (a) the product of (i) \$ * and (ii) the number of GM Units subject to the Lease on the first day of such semiannual period for which such rental installment is due; and
- (b) the product of (i) \$ * and (ii) the number of GE Units subject to the Lease on the first day of such semiannual period for which such rental installment is due."

(j) Section 17 of the Lease is hereby amended by:

(1) inserting the words "in the continental United States" immediately following the words "to the Owner-Trustee " appearing near the end of the third line of Section 17; and

(2) inserting the following after the last sentence of Section 17 as a new paragraph:

"If, upon the expiration of an extended term of this Lease with respect to any Unit that had been operated in Mexico, Lessee fails to deliver possession of such Unit in the continental United States per this Section 17 such Unit shall be deemed to be the subject of a Casualty Occurrence and then Lessee shall comply with whichever of the following two options shall be elected by Lessee in written notice to Owner-Trustee, and each Owner (provided, however, that this paragraph shall not apply to the first eight Units, if any, that are the subject of a Casualty Occurrence in Mexico):

(i) Lessee shall deliver possession of a replacement Unit of Equipment of the same or similar make and model, in any case to be acceptable to Owner-Trustee as being of equal value and utility, and in the condition required by this Lease (a "Replacement Unit"); or

** Redacted for purpose of E.C.C. filing*

(ii) Lessee shall pay Owner-Trustee the greater of the Fair Market Sale Value of the Unit or the Casualty Value for the subject Unit.

In the event that Owner-Trustee elects option (i) above, and Lessee fails to make the delivery required under option (i) forthwith, then Lessee shall continue to pay rental at the daily equivalent of the rental applicable to the last rent due under the extended Lease term (and bear any and all other obligations and risks under the Lease as to such Unit) for such affected Unit for a period equal to the time elapsed between the end of the extended Lease term and the date the affected Unit or a Replacement Unit is actually delivered to Owner-Trustee, but in no event longer than 365 days from the date of expiration of the extended Lease term. During this period, Lessee shall in good faith attempt to obtain possession of such Unit and deliver such Unit over to Owner-Trustee. At the conclusion of such one year period, if Lessee has been unable to obtain and deliver such Unit or Replacement Unit over to Owner-Trustee, then Lessee shall pay Owner-Trustee the greater of the Fair Market Sale Value of the Unit or the Casualty Value for the subject Unit.

"Fair Market Sale Value' shall be the amount which would obtain in an arm's length transaction between an informed and willing purchaser under no compulsion to buy and an informed and willing seller under no compulsion to sell, and, for purposes of such determination, the Unit shall be assumed to be in the possession of the Owner-Trustee and in the condition required by the Lease. If, after 90 days from the expiration of an extended term of this Lease without a permitted renewal having taken place, one or more Units have not been returned to Owner-Trustee from Mexico, and Owner-Trustee and Lessee have been unable to agree upon a determination of Fair Market Sale Value of a Unit, such value shall be determined in accordance with the foregoing definition by the following procedure:

"If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Sale Value of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the

determination of Fair Market Sale Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Sale Value. The appraiser proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Sale Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee."

(k) Section 21 of the Lease is hereby amended so as to substitute the following addresses for J.P. Morgan Interfunding Corp. and the Lessee, respectively:

(x) for J.P. Morgan Interfunding Corp.: 60 Wall St., 23rd Floor, New York, New York 10260-0060;

(y) for the Lessee: 3200 Continental Plaza, 777 Main Street, Fort Worth, TX 76102, attention: Assistant Vice President and Assistant Treasurer.

SECTION 3. MISCELLANEOUS.

Section 3.1. Governing Law. The terms of this Amendment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada. .

Section 3.2 Counterparts. This Amendment may be executed in several counterparts, such counterparts together constituting but one and the same instrument. Although for convenience this Amendment is dated as of the date first set forth above, the actual date or dates of extension hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

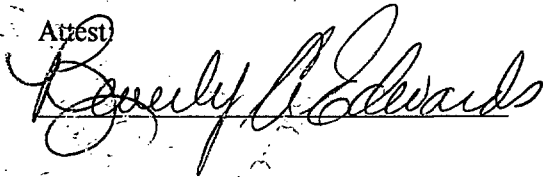
Section 3.3 Reference to Lease. Any and all notices, requests, certificates and other instruments executed and delivered concurrently with or after the extension and delivery of this Amendment may refer to the "Lease of Railroad Equipment dated as of May 1, 1978" without making specific reference to this Amendment but nevertheless all such references shall be deemed to include this Amendment unless the context shall otherwise require.

Section 3.4 Ratification. Except to the extent hereby extended, amended or modified, the Lease is in all respects hereby ratified, confirmed and approved by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Amendment and Extension to Lease of Railroad Equipment to be executed as of the date first above written.

(CORPORATE SEAL)

Attest:



**BURLINGTON NORTHERN RAILROAD
COMPANY (as successor to Burlington
Northern Inc.)**

By



Its Sr. Vice President & Treasurer

**UNITED STATES TRUST COMPANY OF NEW
YORK, as Owner Trustee and Lessor**

(CORPORATE SEAL)

Attest:



By



Its ASST. VICE PRESIDENT

STATE OF TEXAS)

) SS.:

COUNTY OF TARRANT)

On this 9th day of September 1994, before me personally appeared Robert F. McKenney, to me personally known, who being by me duly sworn, says that he/she is SEVP & Treasurer of BURLINGTON NORTHERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he/she acknowledged that the extension of the foregoing instrument was the free act deed of said corporation.

Sharon D. Bossier
Notary Public



STATE OF NEW YORK)

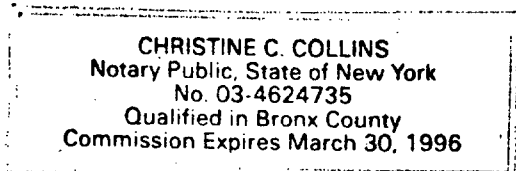
COUNTY OF NEW YORK)

On this 7th day of September 1994, before me personally appeared MARGARET CIESMELEWSKI, to me personally known, who being by me duly sworn, says that he/she is ASST. VICE PRESIDENT of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he/she acknowledged that the extension of the foregoing instrument was the free act and deed of said corporation.

Christine C. Collins
Notary Public

{Notarial Seal}

My Commission Expires



Schedule A
to Amendment and Extension to Lease of Railroad Equipment
dated as of July 8, 1994 for 71 locomotives

<u>Date</u>	<u>Casualty</u> <u>Value</u>
1/3/1995	
2/3/1995	
3/3/1995	
4/3/1995	
5/3/1995	
6/3/1995	
7/3/1995	
8/3/1995	
9/3/1995	
10/3/1995	
11/3/1995	
12/3/1995	
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4/3/1998	
5/3/1998	
6/3/1998	
7/3/1998	

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Schedule A
to Amendment and Extension to Lease of Railroad Equipment
dated as of July 8, 1994 for 71 locomotives

8/3/1998
9/3/1998
10/3/1998
11/3/1998
12/3/1998
1/3/1999
2/3/1999
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4/3/2001
5/3/2001
6/3/2001
7/3/2001
8/3/2001
9/3/2001
10/3/2001
11/3/2001
12/3/2001
1/3/2002 and thereafter

Redacted for purpose of F.C.C. filing